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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. KENYA HASSAN MABSON, Defendant and Appellant.	B213036 (Los Angeles County Super. Ct. No. BA285521)

APPEAL from a judgment of the Superior Court of Los Angeles County, George Gonzalez Lomeli, Judge. Affirmed.

Deborah L. Hawkins, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Scott A. Taryle and Viet H. Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

In a bifurcated trial, Kenya Hassan Mabson was found not guilty by reason of insanity of two counts of first degree murder. She appeals the order committing her to the Department of Mental Health for a period not exceeding life without the possibility of parole. She contends the evidence was insufficient to support the jury's finding that the murders were willful, deliberate, and premeditated. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts.*[1]

a. *People's case.*

Victim Pauline Arline Axel, who was 83 years old, and her daughter, Sheilah Mabson, lived together in an upstairs, two-bedroom apartment located on Coco Avenue in Los Angeles. One evening in approximately March 2005, Sheila's daughter, appellant Kenya Mabson,[2] and Kenya's three young children unexpectedly arrived at the apartment. Kenya explained they had no place to stay, so Axel and Sheilah allowed them to move in.

Victim Ellis Dunbar cleaned the women's apartment every week. He was well-liked by Axel and Sheilah, and had little contact with Kenya. Kenya never displayed any hostility toward Dunbar.

Axel received housing assistance under the "Section 8" program.[3] Under the terms of that program, Kenya and her children were not allowed to reside with Axel at the apartment. Axel was concerned about jeopardizing her entitlement to housing

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[1] Because the evidence presented at the sanity phase is not relevant to the issue presented on appeal, we do not discuss it here.

[2] For ease of reference, we sometimes hereinafter refer to appellant and her mother by their first names.

[3] "Section 8" is shorthand for a housing assistance program funded by the United States Department of Housing and Urban Development to provide rental assistance to senior citizens, disabled or handicapped persons and very low income tenants. (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2006) 136 Cal.App.4th 119, 122-123.)

assistance, and accordingly wanted Kenya and the children to move out. Axel repeatedly asked Sheilah when Kenya was moving, and Sheilah relayed the question to Kenya, making clear that Axel wished she would move. Kenya did not appear to be upset or irritated by her grandmother's wishes. The two never had a "harsh exchange of words," and had a good, though not particularly affectionate, relationship.

During the months Kenya lived at the Coco Avenue apartment, Kenya and her children rarely left the apartment. Sheilah never saw her become angry for any reason. Kenya often wore Ethiopian-style attire, and was very quiet.

On the morning of June 16, 2005, Axel again asked Sheilah when Kenya intended to move out of the apartment. Sheilah relayed the question to Kenya, who replied that a friend was getting a room ready for her. Sheilah then left the apartment for an appointment at approximately 10:30 or 11:00 a.m. Kenya and the children were present when Sheilah left, and Kenya did not appear to be angry or hostile toward her grandmother. Kenya did not have any cuts or injuries on her hands at that time.

Dorothy Bates lived in the apartment below Axel's. On the morning of June 16, 2005, at approximately 11:00 a.m., Bates heard Axel and another woman intensely arguing in Axel's apartment. Suddenly, Axel began screaming, " 'Mr. Ellis, help. Help, Mr. Ellis. . . . Help me, please, Mr. Ellis.' " Bates summoned the apartment manager, Deborah McMillan. McMillan also heard Axel's screams. When the screaming stopped, McMillan listened for several minutes but heard nothing else. She assumed Axel had simply been embroiled in an argument. A few minutes later, Bates and McMillan observed Kenya and her children leaving the apartment. According to McMillan, Kenya appeared calm and unhurried.

Sheilah returned to the apartment at approximately 1:00 p.m., and discovered Axel's and Dunbar's bodies; both had been stabbed to death. Kenya and the children were gone. Sheilah called 911.

Police officers arrived and examined the crime scene. Dunbar's body was found in the bathroom, positioned on his knees, hunched over the bathtub. Axel's body was found on the living room floor. Three knives were located in the apartment. One knife, with a bent blade, was discovered in the east bedroom occupied by Sheilah and Axel. It tested positive for blood. Another knife was found next to Axel's foot; its blade had become separated from the handle, and tested positive for blood. Another piece of the handle, which also tested positive for blood, was found in the kitchen. A third knife with a bent blade was on the kitchen counter; it tested negative for blood. Bloodstains were found on the door leading to Axel's bedroom, on a sheet in the bedroom, and on a wall near the apartment's front entryway.

Axel had been stabbed 10 times in the neck and upper torso. Two of her wounds were fatal. Dunbar had been stabbed in the back 12 times. Seven of his wounds were fatal. He additionally had a defensive wound on his hand, a wound to his leg, and two stab wounds in his forehead. His injuries and the bloodstains found in the bathtub were consistent with the theory that Dunbar was on his knees, leaning over the bathtub, when he was stabbed, looked up at his attacker, and attempted to defend himself or grab the knife.

After leaving the apartment, Kenya and her children took a bus to an Ethiopian restaurant that they had visited before, and then took a taxi to a hotel. Kenya was arrested at the hotel that evening. She had lacerations on her left wrist and hand.

b. *Defense case.*

Sophia Reyes had known Kenya since 1997, and had allowed Kenya to live with her for a period in 2002 when Kenya was pregnant and having financial difficulties. When Reyes first knew Kenya, Kenya was employed by a travel agency and was "spunky, outgoing, peaceful, harmonious," and had a "love for life." She was never violent, and did not raise her voice to her children. Kenya's cousin, Armondo Woods, had spent a great deal of time with Kenya when she was a child and teenager. During that period, Kenya was never violent, aggressive, or short-tempered. By 2002, however, Kenya had become reclusive, passive, and quiet. She was very protective of her children.

In the three-month period prior to the murders, Kenya displayed signs of mental illness. She told her mother and her cousin that her parents were imposters, and that she had been stolen from an Ethiopian hospital. Her personal hygiene decreased, and she lost weight. She told Woods that the late Jamaican reggae artist, Bob Marley, was her cousin. After she was incarcerated, Kenya told Sheilah that during the time she lived at the Coco Avenue apartment, she heard voices that told her to stay in the apartment, and that someone was after her children.

Dr. Jack Rothberg, a psychiatrist, diagnosed Kenya as suffering from paranoid schizophrenia. When he examined Kenya at the jail approximately two weeks after the crime, she was mute and in a "very, very disturbed" psychotic state. Dr. Rothberg opined that it was likely she had experienced significant symptoms for at least a year prior to her arrest. Among other things, Kenya heard voices telling her to protect her children, and had delusions that someone was in the apartment with a gun. In the doctor's opinion, "something catastrophic occurred in her mind" to cause her to commit the killings, behavior which was out of character for her.

2. *Procedure.*

Trial was by jury. In the guilt phase of the proceedings, the jury found Kenya guilty of the first degree murders of Axel and Dunbar (Pen. Code, § 187, subd. (a)).[4] It further found Kenya personally used a deadly and dangerous weapon, a knife, during commission of the offenses (§ 12022, subd. (b)(1)), and that she committed multiple murders (§ 190.2, subd. (a)(3)). In the sanity phase of the trial, the jury found Kenya was insane when she committed the murders. The trial court ordered Kenya committed to the custody of the State Department of Mental Health and placed in Patton State Hospital for a period not exceeding life without the possibility of parole.

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4 All further undesignated statutory references are to the Penal Code.

Kenya appeals the order committing her to the Department of Mental Health. (§ 1237, subd. (a)); *People v. Somerset* (1984) 159 Cal.App.3d 1124, 1126; see generally *People v. Zichko* (2004) 118 Cal.App.4th 1055, 1057.)[5]

DISCUSSION

The evidence was sufficient to support the jury's finding that Kenya committed first degree murder.

Kenya does not dispute that the evidence was sufficient to establish she stabbed and killed Axel and Dunbar. However, she urges that the evidence was insufficient to prove deliberation and premeditation, and therefore her convictions must be reduced to second degree murder. We disagree.

When determining whether the evidence was sufficient to sustain a criminal conviction, we review the entire record in the light most favorable to the judgment to determine " 'whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.]" (*People v. Hillhouse* (2002) 27 Cal.4th 469, 496; *People v. Halvorsen* (2007) 42 Cal.4th 379, 419; *People v. Carter* (2005) 36 Cal.4th 1215, 1257-1258.) We presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Boyer* (2006) 38 Cal.4th 412, 480; *People v. Kraft* (2000) 23 Cal.4th 978,

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5 Section 1237 provides that an appeal may be taken from "the commitment of a defendant for insanity" and that such an order of commitment "shall be deemed to be a final judgment within the meaning of this section." (§ 1237, subd. (a).) "On an appeal taken by a defendant, the appellate court may review 'any question of law involved in any ruling, order, instruction, or thing whatsoever said or done at the trial or prior to or after judgment . . . which affected the substantial rights of the defendant.' (§ 1259.) The events at the guilt phase clearly affect the substantial rights of one found not guilty by reason of insanity because a valid guilt determination is a prerequisite to any NGI commitment [citations] and one cannot be institutionally confined for longer than the maximum term of commitment provided for the underlying offenses." (*People v. Somerset*, *supra*, 159 Cal.App.3d at pp. 1126-1127.)

1053.) Reversal for insufficient evidence is not warranted unless it appears " 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331; *People v. Zamudio* (2008) 43 Cal.4th 327, 357.) The same standard governs in cases where the prosecution relies primarily on circumstantial evidence. (*People v. Zamudio, supra,* at p. 357; *People v. Maury* (2003) 30 Cal.4th 342, 396.) " 'Although it is the jury's duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant's guilt beyond a reasonable doubt. [Citation.]' [Citation.]" (*People v. Zamudio, supra,* at pp. 357-358; *People v. Kraft, supra,* at pp. 1053-1054.)

A murder that is premeditated and deliberate is murder of the first degree. (§ 189; *People v. Burney* (2009) 47 Cal.4th 203, 235; *In re C.R.* (2008) 168 Cal.App.4th 1387, 1393.) To prove premeditation and deliberation, the People must establish more than the intent to kill. (*People v. Halvorsen, supra,* 42 Cal.4th at p. 419.) "Premeditated" means considered beforehand, and "deliberate" means " ' " 'formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action.' " ' " (*People v. Burney, supra,* at p. 235; *People v. Jurado* (2006) 38 Cal.4th 72, 118.) Thus, an intentional killing is premeditated and deliberate if it occurred as the result of preexisting thought and reflection, rather than an unconsidered or rash impulse. (*People v. Burney, supra,* at p. 235.)

A reviewing court normally considers three types of evidence when determining whether a finding of premeditation and deliberation is adequately supported: planning activity by the defendant; motive; and the manner of killing. (*People v. Burney, supra,* 47 Cal.4th at p. 235; *People v. Halvorsen, supra,* 42 Cal.4th at p. 420; *People v. Romero* (2008) 44 Cal.4th 386, 401; *In re C.R., supra,* 168 Cal.App.4th at p. 1393.) These factors are not the exclusive means to establish premeditation and deliberation, however, and need not be present in any particular combination to establish the evidence was sufficient. (*People v. Burney, supra,* at p. 235; *People v. Tafoya* (2007) 42 Cal.4th 147, 172; *People*

v. Lenart (2004) 32 Cal.4th 1107, 1127.) "A first degree murder conviction will be upheld when there is extremely strong evidence of planning, or when there is evidence of motive with evidence of either planning or manner." (*People v. Romero, supra,* 44 Cal.4th at p. 401.) " ' "The process of premeditation . . . does not require any extended period of time. 'The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly. . . .' [Citations.]" ' [Citation.]" (*People v. Halvorsen, supra,* at p. 419; *People v. Koontz* (2002) 27 Cal.4th 1041, 1080.)

Here, the evidence regarding motive and the manner of killing supported the jury's verdicts. Kenya had a motive to commit the killings: her grandmother had repeatedly indicated she wanted Kenya and the children to move out of the apartment. The evidence showed both that Kenya was extremely protective of her children, and that the family spent most of their time in the apartment. The jury could reasonably infer that, in Kenya's disturbed state, she was motivated to kill Axel because Axel was pushing the family to leave the apartment, a circumstance which would likely have been highly threatening to Kenya. The jury could further infer Kenya was motivated to kill Dunbar to prevent him from coming to Axel's aid.

The jury could reasonably infer the manner of the killings showed premeditation and deliberation. Dunbar was found on his knees, leaning over the tub, with 12 stab wounds to his back, two stab wounds to his forehead, a wound to his leg, and a defensive wound on his hand. From the position of Dunbar's body, the pattern of stab wounds, and the fact the blood from Dunbar's wounds was found in the bathtub, the jury could readily infer Kenya killed Dunbar as he was leaning over, cleaning the tub. The fact 12 of the 14 stab wounds were to Dunbar's back indicated Kenya committed a rapid, surprise attack when Dunbar was in a vulnerable position and unable to readily flee or defend himself. These facts suggested Kenya planned the attack.

Likewise, the jury could reasonably infer the sequence and timing of the killings supported the finding of premeditation and deliberation. (See generally *People v. Carter*, *supra*, 36 Cal.4th at pp. 1184-1185.) The evidence strongly suggested Kenya killed Dunbar before attacking Axel. Although neighbors heard Axel and Kenya arguing, and Axel pleading for help, they did not hear Dunbar. The jury could infer that Axel was screaming as or just before she was stabbed. If Dunbar had been alive at that point, he would surely have come to her aid or at least come into the living room to investigate. Had that been the case, his body would not have been found leaning over the bathtub. The jury could therefore infer that Kenya planned the killings, stabbing Dunbar first in order to prevent him from coming to Axel's aid. The killings appeared to be methodical and, therefore, planned.

Moreover, the wound patterns suggested premeditation and deliberation. Dunbar was stabbed 12 times in the back; Axel was stabbed repeatedly in the neck and upper torso. The fact the multiple wounds were clustered in areas containing vital organs tended to suggest a preconceived design to kill, rather than a sudden explosion of violence. (See *People v. Prince* (2007) 40 Cal.4th 1179, 1253; *People v. Elliot* (2005) 37 Cal.4th 453, 471 [three potentially lethal knife wounds and 80 other stab and slash wounds could be construed as intimating a preconceived design to kill]; *People v. Lewis* (2009) 46 Cal.4th 1255, 1293.) Finally, three knives were found in the apartment; all three were either bent or broken, and two tested positive for blood. This evidence suggests Kenya obtained a second, and possibly third, weapon after damaging the first and possibly second knife. The knives were presumably not kept in the bathroom or bedroom, where they were found; the jury could reasonably infer Kenya obtained them from the kitchen and took them to the living room and bathroom prior to the attacks. Bloodstains found near the entry to the apartment and in Axel's bedroom suggested Kenya pursued Axel through the apartment as she attempted to flee. This evidence supported an inference of premeditation and deliberation. (See *People v. Sanchez* (1995) 12 Cal.4th 1, 34 [where attacker pursued victim after victim was gravely wounded, and used two weapons, evidence supported jury's implied finding of premeditation and

deliberation], disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421-422, fn. 22; *People v. Koontz, supra*, 27 Cal.4th at p. 1082 [defendant's act of arming himself and following victim was evidence of planning]; *People v. Wharton* (1991) 53 Cal.3d 522, 547 [defendant's act of retrieving a hammer would constitute planning activity].) In sum, while we cannot characterize the evidence of premeditation and deliberation as overwhelming, we conclude it was sufficient to support the jury's verdicts.

Kenya puts forth a variety of arguments in support of her contention that the evidence was insufficient to show deliberation and premeditation. None are persuasive. Primarily, she contends that because of her schizophrenia, she could not have premeditated and deliberated. Reduced to its essence, this argument is an assertion of the diminished capacity defense, i.e., the claim that a defendant could not have formed a particular mental state due to his or her mental illness or intoxication. (See, e.g., *In re Christian S.* (1994) 7 Cal.4th 768, 774; *People v. Saille* (1991) 54 Cal.3d 1103, 1110; *People v. Steele* (2002) 27 Cal.4th 1230, 1253.) " 'The essence of a showing of diminished capacity is a "showing that the defendant's mental capacity was reduced by *mental illness, mental defect or intoxication*." ' [Citation.]" (*People v. Steele, supra,* at p. 1253 [defendant's argument that he had a psychological dysfunction and "just 'snapped' " when he heard a helicopter showed diminished capacity].) However, as Kenya acknowledges, the diminished capacity defense was abolished in 1982. (*People v. Steele, supra,* at p. 1253; *In re Christian S., supra,* 7 Cal.4th at p. 775; *People v. Mejia-Lenares* (2006) 135 Cal.App.4th 1437, 1450; *People v. Reyes* (1997) 52 Cal.App.4th 975, 982.) Accordingly, Kenya's citation to cases involving this defense does not assist her.

The issue of "diminished *actuality* survives, i.e., the jury may generally consider evidence of voluntary intoxication or mental condition in deciding whether defendant actually had the required mental states for the crime." (*People v. Steele, supra,* 27 Cal.4th at p. 1253; *People v. Mejia-Lenares, supra,* 135 Cal.App.4th at p. 1450.) Thus, in the instant case it was a question for the jury whether, because of her mental illness or any other reason, Kenya did not *actually* premeditate and deliberate. As we

have discussed, there was evidence from which a reasonable jury could have concluded Kenya did, in fact, premeditate and deliberate. That she suffered from schizophrenia did not preclude a finding of premeditation and deliberation. Kenya could, for example, have believed voices told her to kill her grandmother and Dunbar, and premeditated and deliberated regarding how to carry out those actions. The jury ultimately found Kenya was insane at the time of the killings, but that finding does not preclude a conclusion that she also premeditated and deliberated.

Kenya's other arguments—that various pieces of evidence cited by the prosecutor did not persuasively support a finding of premeditation, and that a premeditated killing was inconsistent with her passive personality—were appropriately made to the jury, but not to this court. " 'Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]' " (*People v. Zamudio, supra,* 43 Cal.4th at p. 357; Evid. Code, § 312; *People v. Maury, supra,* 30 Cal.4th at p. 403; *People v. Young* (2005) 34 Cal.4th 1149, 1181.) In sum, the evidence was sufficient to support the jury's finding that the killings were willful, premeditated and deliberate.

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.